

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SHIRLEY DOUGLAS,

PLAINTIFF

VS.

CIVIL ACTION NO. 3:10-cv-00677-DPJ-FKB

RICHARD B. SCHWARTZ AND
SCHWARTZ AND ASSOCIATES,

DEFENDANTS

NOTICE OF REMOVAL

TO: Barbara Dunn, Clerk
Circuit Court of Hinds County
P.O. Box 327
Jackson, MS 39205

Philip W. Thomas, Esq.
Philip W. Thomas, P.A.
P. O. Drawer 24464
Jackson MS 39225-4464

Shirley Douglas
c/o Terre M. Vardaman, Ch 13 Trustee
Post Office Box 1326
Brandon, MS 39034

YOU WILL PLEASE TAKE NOTICE that this Notice of Removal and the exhibits attached hereto have been filed this day for and on behalf of Richard B. Schwartz and Schwartz & Associates, P.A., defendants, in the United States District Court for the Southern District of Mississippi, Jackson, Division. You are hereby served with a copy of this Notice of Removal of said cause to the United States District Court from the Circuit Court for the First Judicial District of Hinds County, Mississippi, upon the grounds stated herein. Pursuant to said removal, you will

proceed no further in said Circuit Court for the First Judicial District of Hinds County, Mississippi, and you will be mindful of the provisions of Bankruptcy Rule 9027 and Title 28 U.S.C. Section 1441, *et seq.* Please take notice hereof and govern yourselves accordingly.

As its short and plain statement of the grounds for removal of this civil action, defendants Richard B. Schwartz and Schwartz & Associates, P.A. (hereinafter, sometimes, the "Schwartz Defendants"), would show unto the Court the following:

I.

There is now pending in the Circuit Court for the First Judicial District of Hinds County, Mississippi, a certain civil action styled "*Shirley Douglas v. Richard Schwartz and Schwartz & Associates, P.A.*," being civil action number 251-10-880 CIV on the docket of said court (the "state court action"). The state court action is an action for alleged negligent handling of approximately \$373,000.00 in settlement funds property of the bankruptcy estate of plaintiff Douglas and for alleged vicarious liability and for disgorgement of attorney fees in the amount of \$172,000.00 and for punitive damage and attorney fees and interest. The time within which the Schwartz Defendants are required to plead, answer or otherwise respond to the complaint in the state court action (the "Complaint") has not yet expired, and the thirty-day period within which to file for and obtain removal of said civil action has not yet expired. A copy of the complaint in the state court action served upon defendants Richard B. Schwartz and Schwartz & Associates, P.A., is attached hereto and incorporated herein as Exhibit "A."

II.

Upon removal, this proceeding is a core proceeding. This proceeding involves some or all of the proceeds of a settlement in the total amount of \$500,000.00 which defendants Richard

B. Schwartz and Schwartz & Associates, P.A., obtained for the benefit of Shirley Douglas at a time when she was a debtor in a Chapter 13 proceeding. On July 31, 2009, Shirley Douglas filed a Chapter 13 proceeding in the United States Bankruptcy Court for the Northern District of Mississippi which was docketed by the Clerk of Court as No. 09-13893-DWH. The Bankruptcy Court appointed Terre M. Vardaman as the Chapter 13 Case Trustee. That proceeding is still pending. Defendants Richard B. Schwartz and Schwartz & Associates, P.A., were counsel for Shirley Douglas pursuant to a written professional services agreement (the "contingency fee contract") dated June, 2007, regarding a personal injury claim which she had against a third party prior to her filing for relief under Chapter 13 of the United States Bankruptcy Code. Richard B. Schwartz and Schwartz & Associates, P.A., continued to represent Douglas on the personal injury claim during the pendency of Debtor's Chapter 13 proceeding. Richard B. Schwartz and Schwartz & Associates, P.A., negotiated a settlement of Debtor's personal injury claim for \$500,000.00. The proceeds of the settlement of the personal injury claim were property of the bankruptcy estate of Douglas and subject to the control of the Chapter 13 Case Trustee. Because the state court proceeding involves property of a bankruptcy estate, it is a core proceeding for purposes of bankruptcy court jurisdiction.

III.

On April 7, 2010, through separate counsel Vann F. Leonard, Richard B. Schwartz and Schwartz & Associates, P.A., filed an application for employment of Richard B. Schwartz and Schwartz & Associates, P.A., as Special Counsel to approve the contingency fee contract between Shirley Douglas and Schwartz & Associates, P.A. The professional services agreement between Shirley Douglas and Schwartz & Associates, P.A., provided for payment to Schwartz &

Associates, P.A., of a contingency fee of one-third of the amount recovered if settled before trial plus reimbursement of expenses incurred in the matter. Also on April 7, 2010, Richard B. Schwartz and Schwartz & Associates, P.A., through separate counsel Vann F. Leonard, filed an application to approve a compromise and settlement of the personal injury claim of Douglas for \$500,000.00 and an application for approval of the payment to Schwartz & Associates of \$172,414.68 in attorney fees and expenses out of the proceeds of the settlement.

IV.

By order entered on June 3, 2010, the United States Bankruptcy Court for the Northern District of Mississippi approved employment of Richard B. Schwartz and Schwartz & Associates, P.A., as special counsel *nunc pro tunc* and approved the contingency fee contract between & Associates, P.A., and Debtor. By orders entered on June 3, 2010, the United States Bankruptcy Court for the Northern District of Mississippi approved settlement of the personal injury matter for \$500,000 in favor of the Debtor and approved payment of attorney fees and reimbursement of expenses to Schwartz & Associates in the total amount of \$172,414.68 out of the settlement proceeds. The Bankruptcy Court also ordered that all "excess settlement proceeds after payment of legal fees and reimbursement of expenses shall be tendered to the Chapter 13 Case Trustee" for distribution to unsecured creditors of Debtor or be disbursed by Vann F. Leonard "at the direction of the Chapter 13 Case Trustee, all without further Order of this Court." Copies of the orders entered by the United States Bankruptcy Court for the Northern District of Mississippi in Plaintiff's Douglas 's Chapter 13 proceeding (a) granting the application to employ Richard B. Schwartz and Schwartz & Associates, P.A., as Special Counsel and approving the contingency fee contract; (b) granting the application to compromise a controversy; and, (c) granting the

application for payment of compensation and reimbursement for expenses are attached hereto as Exhibits "B," "C," and "D," respectively. (Doc. Nos. 52, 53-1, and 54, respectively, in Bankruptcy Case No. 09-13893 in the U.S. Bankruptcy Court for the Northern District of Mississippi)

V.

On October 21, 2010, the Chapter 13 Case Trustee Terre M. Vardaman filed Adversary Proceeding No. 10-01187-DWH in the United States Bankruptcy Court for the Northern District of Mississippi against Richard B. Schwartz, Schwartz & Associates, P.A., and Vann F. Leonard and John Does in Chapter 13 (the "Adversary Proceeding"). A copy of the complaint in Adversary Proceeding No. 10-01187-DWH is attached hereto and incorporated herein as Exhibit "E." (AP Doc. No. 1.) In the Adversary Proceeding complaint, the Chapter 13 Case Trustee alleges that Vann F. Leonard, Esq., paid the attorney fees and expenses owing to defendant Richard Schwartz and Schwartz & Associates out of the proceeds of the settlement but failed to pay the balance of approximately \$372,000.00 to the Chapter 13 Case Trustee and that defendants are liable for the acts of commission or omission of Leonard. In the Adversary Proceeding the Chapter 13 Case Trustee seeks to recover the balance of the settlement proceeds for the Chapter 13 estate and to obtain other relief. Debtor, through her counsel in the state court proceeding, has filed a motion to intervene in the Adversary Proceeding. By order entered on November 17, 2010, in Adversary Proceeding No. 10-01187 in the United States Bankruptcy Court for the Northern District of Mississippi (AP Doc. No. 9), United States Bankruptcy Judge David W. Houston, II, granted the motion of Debtor Shirley Douglas to intervene in the Adversary Proceeding. A copy of that order is attached hereto and incorporated herein as Exhibit "F."

VI.

On October 21, 2010, Philip Thomas, as counsel for Shirley Douglas, but without the permission of the Chapter 13 Case Trustee or the Debtor's bankruptcy counsel, filed the state court proceeding against Richard Schwartz and Schwartz & Associates, P.A. In the state court proceeding, Douglas alleges that Vann F. Leonard, Esq., paid the attorney fees and expenses owing to defendant Richard Schwartz and Schwartz & Associates out of the settlement proceeds but failed to pay the balance of approximately \$372,000.00 to the Chapter 13 trustee and that defendant Richard B. Schwartz and Schwartz & Associates, P.A., are liable for the acts of commission or omission of Leonard.

VII.

The state court complaint by Philip W. Thomas, Esq., on behalf of Shirley Douglas seeks to recover \$500,000.00 or \$372,000.00 from the Schwartz defendants. The funds involved in the state court proceeding are the very same proceeds of the settlement that the Chapter 13 Case Trustee seeks to recover from the Schwartz defendants and Vann Leonard in the Adversary Proceeding.

VIII.

The state court action concerns funds which belong to the Chapter 13 estate of the Debtor and are subject to the control of the Chapter 13 Case Trustee and not to the control of Debtor Shirley Douglas.

IX.

On November 5, 2010, Paula E. Drungole, Esq., bankruptcy counsel for Debtor Shirley Douglas in the Chapter 13 proceeding, wrote her client a letter, which counsel filed in the Douglas

Chapter 13 proceeding (Bankruptcy Case Doc. No. 69), advising Debtor that the proceeds of the settlement were property of the estate in bankruptcy. A copy of the letter by Paula E. Drungole, Esq., bankruptcy counsel for Debtor Shirley Douglas, is attached hereto and incorporated herein as Exhibit "G."

X.

This proceeding is removable by these defendants pursuant to the provisions of Bankruptcy Rule 9027 and Title 28 U.S.C. §§ 1441, et seq., including § 1452, Removal of Claims Related to Bankruptcy.

XI.

Defendant, upon the filing of this Notice of Removal, has given notice to plaintiff Shirley Douglas and to her attorney Philip W. Thomas, Esq., of Jackson, Mississippi, who filed the state court proceeding of the filing of said Notice of Removal of said civil action, and simultaneously therewith, defendant has filed a true and correct copy of the Notice of Removal with the Clerk of the Circuit Court for the First Judicial District of Hinds County, Mississippi, together with the exhibits thereto, all in compliance with Bankruptcy Rule 9027 and Title 28 U.S.C. Section 1446(d).

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this Notice of Removal and exhibits thereto be received and filed and that the said Circuit Court of The First Judicial District of Hinds County, Mississippi, proceed no further herein. Defendants further pray for all necessary writs to bring before this Honorable Court all records and proceedings in the said Circuit Court of the First Judicial District of Harrison County, Mississippi. Defendants further pray that this Court transfer this case to the United States District Court for the Northern District

of Mississippi or to the United States Bankruptcy Court for the Northern District of Mississippi, as may be appropriate, or, alternatively, that this Court dismiss this case because it is a core proceeding in a bankruptcy case and it duplicates a case involving the same parties which the Chapter 13 Trustee of Douglas has already filed as Adversary Proceeding 10-01187-DWH in the United States Bankruptcy Court for the Northern District of Mississippi and because plaintiff Douglas has already intervened in that adversary proceeding and because further proceedings in this case would be wasteful of judicial resources and the resources of the parties involved. Defendants pray for such other, further, special and general relief as they may be entitled to receive.

Respectfully submitted,

RICHARD B. SCHWARTZ, ESQ., AND
SCHWARTZ AND ASSOCIATES, P.A.

BY: 
THEIR ATTORNEYS

RICHARD C. BRADLEY III - MSB # 4269
DANIEL, COKER, HORTON & BELL, P.A.
4400 OLD CANTON ROAD, SUITE 400
POST OFFICE BOX 1084
JACKSON, MISSISSIPPI 39215-1084
TELEPHONE: (601) 969-7607
FACSIMILE: (601) 969-1116

J WYATT HAZARD, - MSB # 2141
DANIEL, COKER, HORTON & BELL, P.A.
4400 OLD CANTON ROAD, SUITE 400
POST OFFICE BOX 1084
JACKSON, MISSISSIPPI 39215-1084
TELEPHONE: (601) 969-7607
FACSIMILE: (601) 969-1116
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed below by first class mail, postage prepaid, or by e-mail to the address shown below except as otherwise shown below:

Paula E. Drungole, Esq.
P. O. Box 186
Starkville, Mississippi 39760-0186
drungolelawfirm@bellsouth.net
Debtor's Bankruptcy Counsel

Terre M. Vardaman, Esq.
Chapter 13 Trustee
Post Office Box 1326
Brandon, Mississippi 39043
missatty@bellsouth.net

Office of the United States Trustee
100 West Capitol Street, Suite 706
Jackson, Mississippi 39269
USTPRegion05.AB.ECF@usdoj.gov

Selene D. Maddox, Esq.
362 North Broadway Street
Tupelo, Mississippi 38804
sdmaddox63@gmail.com
Counsel for the Chapter 13 Case Trustee

Philip W. Thomas, Esq.
Post Office Box 24464
Jackson, Mississippi 39225-4464
pthomas@thomasattorney.com
Counsel for Plaintiff Shirley Douglas

R. Adam Kirk, Esq.
Gore, Kilpatrick & Dambrino, PLLC
135 First Street (38901)
Post Office Box 901
Grenada, Mississippi 38902-0901
akirk@gorekilpatrick.com
Counsel for Richard B. Schwartz, Esq., and
Schwartz & Associates, P.A.

By Hand:
Barbara Dunn, Clerk
Circuit Court of Hinds County
P.O. Box 327
Jackson, MS 39205

This the 19th day of November, 2010.


Richard C. Bradley III, MSB #4269

LIST OF EXHIBITS

- A. Complaint in State Court Action by Shirley Douglas against Richard B. Schwartz, Schwartz & Associates, P.A.
- B. Order of United States Bankruptcy Court for the Northern District of Mississippi Approving Employment of Special Counsel *Nunc Pro Tunc* And Approving Contingency Fee Contract. (Bankruptcy Case Doc. No. 52)
- C. Order of United States Bankruptcy Court for the Northern District of Mississippi Approving Compromise And Settlement (Bankruptcy Case Doc. No. 53-1)
- D. Order of United States Bankruptcy Court for the Northern District of Mississippi Approving Attorney's Fee (Bankruptcy Case Doc. No. 54)
- E. Complaint of Chapter 13 Trustee in Adversary Proceeding No. 10-01187-DWH against Richard B. Schwartz, Schwartz & Associates, P.A., and Vann F. Leonard and John Does. (AP 10-01187 Doc No. 1)
- F. Order of United States Bankruptcy Court for the Northern District of Mississippi Granting Shirley Douglas' Motion To Intervene In Adversary Proceeding 10-01187 (AP 10-01187 Doc No. 9)
- G. Letter from Paula E. Drungole, Esq., to Ms. Shirley Douglas dated November 5, 2010. (Bankruptcy Case Doc. No. 69)